

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

09 SEP -8 PM 1:59

UNITED STATES OF AMERICA, et al., : CASE NO. C-1-02-107
Plaintiffs, : JUDGE S. ARTHUR SPIEGEL
-VS- : MAGISTRATE HOGAN
BOARD OF HAMILTON COUNTY : **REQUEST FOR REVIEW**
COMMISSIONERS, et al., :
Defendants. :

I, BRUCE & CHERYL PATANELLI, request that the Court review my Water-in-Basement claim, pursuant to the Court's February 2, 2006, Order. Attached hereto is the information detailing the nature of my dispute.

Respectfully submitted,

Bruce N. Patanelli

Cheryl Handwick - Patanelli

Signature

Bruce N. Patanelli

CHERYL HANDWICK PATANELLI

Name (print)

9/9/08

Date

Bruce and Cheryl Patanelli
1623 Kemper Avenue #1 and #2
Mount Healthy, OH 45231

September 8, 2008

Nature of Dispute:

This letter is intended to dispute the finding of the MSD regarding damages incurred as a result of a sewage backup on my property. MSD is disputing the damages—stating that the telephone pole crushed the lateral line near the tap in two letters to us: June 13 and July 17 of this year.

Now comes a letter from the Legal Aid Society stating that MSD's position is that the backup was caused by a broken or collapsed sewer line in the street in front of our home.

Our contention is that when the main sewer line repair was done, we lost our tap into the main sewer line. They dug up our neighbor's apron along with part of our property around the telephone pole to repair the main sewer line. The tap for our neighbor's sewer is in same area as ours is, but we were not tapped into the main sewer line after the repair.

This caused a backup into our lateral line as well as causing the telephone pole in the front yard to become loose—and possibly sink—you could push it with your hands. Of course, all of this was due to all of the waste that had saturated the ground since we no longer had a tap into the main line.

We called MSD several different times regarding the backup. They snaked the line on a couple of occasions—and said that the problem was on our property—and not their responsibility.

We called Underground Detective to run a camera through the lateral line on December 11, 2007. They were able to run a camera completely through our lateral line all the way to the telephone pole near the street.

MSD was called again. They began running a camera in the main sewer line from the street to our house to check the taps and to see if there was a break in the connection with our lateral line. They found both of our neighbor's taps, but could not locate our tap at 1623 Kemper Avenue. They should have a record of this.

A dye test was then conducted by MSD personnel to determine exactly where our line was tapped into the main. Large amounts of dye were put into the lateral line access on the outside of our house. They looked at their camera in the main sewer, but could not locate the dye. We then ran some water in the lateral line access outside the house to try and flush the dye to the street to locate the lateral line, but again, they could not see any dye with their camera in the main sewer. This dye backed up into the house—damaging a section of my daughter's carpet that previously was spared from the backup. MSD also ran a camera through the lateral line, and could get no further than the telephone pole—which was how far the Underground Detective got..

After this, MSD sent out a crew, and this is when all of the repairs began—that lasted for more than a week.. First of all, they had to call and have the telephone pole removed. This telephone pole was non-functional—so it was not replaced. As mentioned previously, this telephone pole could be pushed by the MSD crew—since the ground was so saturated with waste. After they dug the area up, they could not locate our tap.

When speaking with Kevin Crew from MSD—he stated that whomever completed the repairs on the main sewer break did not put things back correctly. So, Kevin and his crew proceeded to put in a brand new tap into the sewer line. Before doing this though, they had to have a vacuum truck come out and remove all of the waste that had collected in the front yard. The whole process took over a week and was completed right before Christmas 2007.

During this process, MSD sent in their hazard clean up crew to clean up my basement. They removed the

remaining linoleum from the bathroom, a section of my daughter's carpet that was damaged with the dye/waste, around 2 feet from the bottom of each of the paneling walls plus insulation on the outside walls, along with the door casing/corner panels, and any loose tiles on the floor. I had already removed all of the carpet—except around three feet from one corner that had not been soiled from the backup throughout the year. MSD took pictures of all of this—and this should be on file.

What I am looking for is to replace what was damaged due to the backup—and clean up process. I have included an invoice of an estimate I have prepared that would put my basement back where it was before the backup: \$2098.82. This would replace my daughter's carpet and padding, the bathroom floor and ¼ of the room outside the bathroom with a vinyl floor, the carpet and padding on the ¾ of the room outside of the bathroom, the paneling-insulation-casing-and corner panels that were damaged during the clean up process.

I would also like to be reimbursed for the \$200.00 it cost to have the Underground Detective run a camera through the lateral line to prove the problem was not on our property.

Total request for reimbursement: $\$2098.82 + 200.00 = 2298.82$.


I have attached the copies of the City's decision and re-examination decision.

I have included a supply invoice for the repairs along with a copy of the Underground Detective Bill to run the camera through our lateral line. I have also include pictures of the damage as well. Copies of the damage are also on file at MSD.

We are submitting the claim to be reviewed. We would also be available to appear in a hearing if necessary.

Thank you for your consideration.

Sincerely,


Bruce Patanelli
Cheryl Patanelli

David Hardwick**INVOICE**

35 Woodmont Court
Fairfield, Ohio 45014
513-939-0196

INVOICE #1
DATE: AUGUST 30, 2008

TO:
Cheryl and Bruce Patanelli
1623 Kemper Avenue #2
Mt. Healthy, Ohio 45231
513-522-1623

FOR:
Estimate for Labor and Supplies to repair basement room outside
of bathroom, bathroom, and bedroom at 1623 Kemper Avenue to
submit to MSD, WIB #2083.

DESCRIPTION	AMOUNT
Labor: Carpet installation: bedroom and $\frac{3}{4}$ room outside bathroom	250.00
Labor: Vinyl Floor installation: bathroom and $\frac{1}{4}$ room outside bathroom	225.00
Labor: Remove remaining damaged paneling and insulation. Install new paneling, inside/outside corners, 2 $\frac{1}{2}$ door casing and insulation exterior wall.	450.00
Lowe's Colerain Avenue Supplies: 4' by 8' paneling sheets (54'replacing /4'=13.5) 14 Sheets \$12.13 ea. sheet Item # 86415/624121	169.82
4 Outside/ 3 Inside Corner Panels 1"x1"x 8' Item # 41124 at \$4.68 ea.	32.76
Door Casing for 2 $\frac{1}{2}$ doors #46570 7 pieces x \$6.22 ea.	43.54
Replacement Insulation Exterior Wall #237782 \$44.32 (94")	44.32
Armstrong Ashton Linoleum #27786 \$1.27 sq. foot (12' x 7' entry + 12' x 6' bathroom = 12' x 13') 156 sq. ft.	198.12
Carpet Padding $\frac{1}{2}$ inch #17122 \$4.96 sq. yd. (32 + 19 = 51 sq. yd.)	252.96
Nantucket Carpet #135766 \$8.22 sq. yard (2.74 sq. ft. x 3) 12' x 24' Bedroom 32 sq. yd.	263.04
Nantucket Carpet #135766 \$8.22 sq. yard (2.74 sq. ft. x 3) 12' x 14' $\frac{3}{4}$ room outside bathroom 19 sq. yd. (18.7)	156.18
Paneling Nails 4 boxes #12129 \$3.27 each	13.08
TOTAL	\$2098.82



711 BURR OAK ST.
CINCINNATI, OH 45232

www.UndergroundDetective.com

Document 286

TOLL FREE: 888-PIPES-99
Filed 09/09/2008 Page 5 of 13

PHONE: (513) 681-1222

FAX: (513) 681-1498

6697

DATE 12/6/07

BILL TO: Homeowner

JOB LOCATION: 1623 Kemper Ave

SEWER INSPECTION

TYPE OF PIPE	<input type="checkbox"/> PLASTIC	<input type="checkbox"/> CAST IRON
<input checked="" type="checkbox"/> CLAY	<input type="checkbox"/> CONCRETE	<input type="checkbox"/> OTHER
OBSERVATIONS	<input type="checkbox"/> ROOTS	<input checked="" type="checkbox"/> BROKEN
<input type="checkbox"/> HOLDING WATER	<input type="checkbox"/> GREASE	<input type="checkbox"/> OTHER
PIPE SIZE	6"	<input checked="" type="checkbox"/> TAPE/DVD
	<input checked="" type="checkbox"/> CUST.	<input type="checkbox"/> T.U.D.

LEAK DETECTION

TYPE OF PIPE	<input type="checkbox"/> PLASTIC	<input type="checkbox"/> COPPER
<input type="checkbox"/> DUCTILE	<input type="checkbox"/> OTHER	
METHOD USED	<input type="checkbox"/> ACOUSTIC	<input type="checkbox"/> HELIUM
<input type="checkbox"/> OTHER		
OBSERVATIONS		

UTILITY LOCATION/SCAN

<input type="checkbox"/> ELECTRIC	<input type="checkbox"/> COMMUNICATION	<input type="checkbox"/> GAS
<input type="checkbox"/> WATER	<input type="checkbox"/> SEWER	<input type="checkbox"/> OTHER
EQUIPMENT USED	<input type="checkbox"/> ELECTROMAGNETIC	
<input type="checkbox"/> GROUND PENETRATING RADAR	<input type="checkbox"/> METAL DETECTOR	
<input type="checkbox"/> GROUND FAULT LOCATOR	<input type="checkbox"/> OTHER	

ADDITIONAL COMMENTS

Sewer line Broken at
Utility Pole 8' Deep
out at the street

BILLING/PAYMENT INFO

LABOR	HR(S): 1	MIN: 00	\$: 200.00
TRAVEL	HR(S):	MIN:	\$:
TOTAL MILEAGE DRIVEN			

TOTAL AMOUNT \$ 200.00

PAYMENT METHOD

<input type="checkbox"/> BILL	<input type="checkbox"/> CHECK/CASH	<input type="checkbox"/> CREDIT
<input type="checkbox"/> P.O. #		
CARD HOLDER	Cheryl A Patanelli	
CARD NUMBER	5155 9700 2181 1076	
EXP. DATE	11/10	

DRAWING (NOT TO SCALE):

UNDERGROUND UTILITY DAMAGES DISCLAIMER

Due to the uncertainty in locating underground utility facilities including those which are plastic, non-conductive, or otherwise unable to be located during scanning, the undersigned ("Customer") hereby acknowledges and agrees that The Underground Detective of Greater Cincinnati ("UD") shall have no responsibility for Customer's or Customer's designee's excavation of any underground facility, whether marked or unmarked by UD. Customer further acknowledges and agrees that: (a) he or she hereby assumes, without any limitation, all risks of loss and liability relating to or arising out of such excavation by Customer or any third party, including, but not limited to any damage to any underground facility; and (b) there have been no affirmations of fact or promise by UD which relate to services to be provided by UD other than as specified in UD's written project proposal delivered in connection with this Disclaimer.

Customer agrees to assume liability for, and does hereby agree to indemnify, release, protect, save, hold harmless and covenant not to sue UD including its members, officers, directors, agents, employees, assigns, successors and representatives, from and against any and all liabilities, obligations, losses, damages, penalties, causes of action, judgments, liens, claims (including, without limitation, claims involving strict, absolute, or vicarious liability), suits, costs, expenses or proceedings (including, without limitation, legal fees) of any kind or nature whatsoever, which may be imposed on, incurred or asserted against UD, by any other person, in for the location of underground facilities or the related excavation by Customer or any third party. The terms of this Disclaimer shall take precedence over any contradictory, different or additional terms in any written terms relating to this subject matter.

Agreed and Acknowledged: Cheryl Patanelli

Print Name

Date 12/5/07

Bruce and Cheryl Patanelli
1623 Kemper Avenue #1 and #2
Mount Healthy, OH 45231

September 8, 2008

City of Cincinnati
C/O Terry Nester
801 Plum Street
Room 214
Cincinnati, Ohio 45202

Dear Mr. Nester:

Nature of Dispute:

This letter is intended to dispute the finding of the MSD regarding damages incurred as a result of a sewage backup on my property. MSD is disputing the damages—stating that the telephone pole crushed the lateral line near the tap in two letters to us: June 13 and July 17 of this year.

Now comes a letter from the Legal Aid Society stating that MSD's position is that the backup was caused by a broken or collapsed sewer line in the street in front of our home.

Our contention is that when the main sewer line repair was done, we lost our tap into the main sewer line. They dug up our neighbor's apron along with part of our property around the telephone pole to repair the main sewer line. The tap for our neighbor's sewer is in same area as ours is, but we were not tapped into the main sewer line after the repair.

This caused a backup into our lateral line as well as causing the telephone pole in the front yard to become loose-and possibly sink-you could push it with your hands. Of course, all of this was due to all of the waste that had saturated the ground since we no longer had a tap into the main line.

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When speaking with Kavin Crew from MSD—he stated that whomever completed the repairs on the main sewer break did not put things back correctly. So, Kavin and his crew proceeded to put in a brand new tap into the sewer line. Before doing this though, they had to have a vacuum truck come out and remove all of the waste that had collected in the front yard. The whole process took over a week and was completed right before Christmas 2007.

During this process, MSD sent in their hazard clean up crew to clean up my basement. They removed the remaining linoleum from the bathroom, a section of my daughter's carpet that was damaged with the dye/waste, around 2 feet from the bottom of each of the paneling walls plus insulation on the outside walls, along with the door casing/corner panels, and any loose tiles on the floor. I had already removed all of the carpet—except around three feet from one corner that had not been soiled from the backup throughout the year. MSD took pictures of all of this—and this should be on file.

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We are submitting the claim to be reviewed. We would also be available to appear in a hearing if necessary.

Thank you for your consideration.

Sincerely,

Bruce Patanelli
Cheryl Patanelli

**LEGAL AID SOCIETY OF
SOUTHWEST OHIO, LLC**

AN AFFILIATE OF THE LEGAL AID SOCIETY OF GREATER CINCINNATI

August 26, 2008

**DONALD P. KLEKAMP
COMMUNITY LAW
CENTER BUILDING**

**215 East Ninth Street
Suite 500
Cincinnati, Ohio
45202**

Telephone
(513) 241-9400
(800) 582-2682

Facsimile
(513) 241-0047

Bruce Patennelli
1623 Kemper Avenue
Mt. Healthy, OH 45231

Dear Mr. Patennelli:

You contacted Legal Aid in our capacity as Ombudsman for the Metropolitan Sewer District (MSD) Water-In-Basement Program.

MSD has denied responsibility for the backup in your basement. It is MSD's position that the backup was caused by a broken or collapsed sewer line in the street in front of your home. As we have discussed, the sewer line that runs from your home to the main sewer line, the sewer lateral, is the property of and responsibility of the homeowner. Therefore, if the sewer lateral needs to be replaced or cleared of debris, it is generally the homeowner's responsibility to do so. MSD is only required to make a repair to a broken lateral line if it is in the street.

I understand that you believe that your backups are the responsibility of MSD. You have the right to have this matter reviewed by the Federal Court under the WIB case. The Magistrate Judge who oversees the WIB Consent Decree developed a new procedure for homeowners to appeal MSD's decision. To exercise this right, you must file a request to have your dispute reviewed in Federal Court. You would also need to submit any additional information and documentation (photos, receipts, etc.) to support your claim. The Court would review this information, provide you with a hearing (if you want one), and assess whether the City's decision is reasonable. If you are going to exercise your right to the review process, you should file your request as soon as possible.

Enclosed is the Right to Review form and information on the Federal Court Review process.

Feel free to contact me directly at 362-2871 if you need further assistance to understand this process or your rights. Or, you may contact the Ombudsman's main number at 362-2801.

Sincerely,

Rickell Howard /lf

Rickell Howard
Attorney at Law
Assistant to the Ombudsman
MSD Water-In-Basement Program
Direct Dial: (513) 362-2871

RH/lrf
Enclosures

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LEGAL SERVICES IN

Brown County
Butler County
Clermont County
Clinton County
Hamilton County
Highland County
Warren County





**METROPOLITAN SEWER DISTRICT
OF GREATER CINCINNATI**

1600 Gest Street
Cincinnati, Ohio 45204
513-244-1300
www.msdc.org

James A. Parrott
Executive Director

July 17, 2008

Bruce Patanelli
1623 Kemper Avenue
Cincinnati, Ohio 45231

RE: Sewer back-ups at 1623 Kemper Avenue

Dear Mr. Patanelli:

Thank you for your call of July 14. At your request, MSD's Wastewater Collections (WWC) division re-examined the information in their possession, and information you had provided concerning the cause of your back-ups. Their review has determined that your lateral was disconnected from the sewer because the utility pole erected in the right-of-way had crushed the lateral near the tap. As MSD had no control over the placement of this pole, MSD must once again reject your claim for damages. If you would like to discuss the findings of WWC, please call Dennis Madden, WWC Assistant Superintendent, at 352-4215.

If you disagree with the City's disposition of your claim, in accordance with an order in the Consent Decree case, Federal District Court case # C-1-02-107, you may file a Request for Review with the Federal Court in Cincinnati, Ohio. You should file your Request within 90 days with the Clerk's Office of the Federal Court located in the Potter Stewart U.S. Courthouse, Room 103, 100 East 5th Street, Cincinnati, Ohio 45202. You may call the court-appointed Ombudsman, the Legal Aid Society, at (513) 362-2801 for further information concerning your rights under the Consent Decree.

Alternatively, you may appeal the decision through standard legal process in the courts of Hamilton County in the Hamilton County Municipal Court or the Court of Common Pleas. Both of these courts are located at 1000 Main Street.

Sincerely,

Dorothy Carman
Assistant City Solicitor

Customer Service
513-352-4900

Emergency Service
513-352-4900

cc: Dennis Madden, Assistant Superintendent, MSD Wastewater Collections;
Terrance Nestor, Chief Counsel, Law Department



Equal Opportunity Employer



**METROPOLITAN SEWER DISTRICT
OF GREATER CINCINNATI**

1600 Gest Street
Cincinnati, Ohio 45204
513-244-1300
www.msdc.org

James A. Parrott
Executive Director

June 13, 2008

Bruce Patanelli
1623 Kemper Avenue
Cincinnati, Ohio 45231

RE: Sewer back-ups at 1623 Kemper Avenue

Dear Mr. Patanelli:

Your appeal of MSD's finding as to the cause of your back-ups was referred to me. I apologize for the delay, but I just received your file yesterday.

I have reviewed all of MSD's documentation concerning your lateral and it is clear that your lateral was disconnected from the sewer because the utility pole erected in the right-of-way had crushed the lateral near the tap. As MSD had no control over the placement of this pole, MSD must reject your claim for damages.

If you disagree with the City's disposition of your claim, in accordance with an order in the Consent Decree case, Federal District Court case # C-1-02-107, you may file a Request for Review with the Federal Court in Cincinnati, Ohio. You should file your Request within 90 days with the Clerk's Office of the Federal Court located in the Potter Stewart U.S. Courthouse, Room 103, 100 East 5th Street, Cincinnati, Ohio 45202. You may call the court-appointed Ombudsman, the Legal Aid Society, at (513) 362-2801 for further information concerning your rights under the Consent Decree.

Alternatively, you may appeal the decision through standard legal process in the courts of Hamilton County in the Hamilton County Municipal Court or the Court of Common Pleas. Both of these courts are located at 1000 Main Street.

Customer Service
513-352-4900

Emergency Service
513-352-4900

Sincerely,

Dorothy Carman
Assistant City Solicitor



Equal Opportunity Employer

March 27, 2008

Shirley Lenzly
801 Plum Street
Cincinnati, OH 45202

Dear Shirley Lenzly:

This letter is intended to dispute the finding of the MSD regarding damages incurred as a result of a sewage backup on my property. The MSD has concluded that a misplaced utility pole was the sole cause of the problem.

The major issue is that my lateral line was never tapped into the main sewer line in the first place. This assertion is supported by two separate incidents.

First Incident:

Earlier in the year, 2007, a major rupture of the sewer main washed away extensive quantities of soil resulting in large sinkholes right next to the utility pole. These large holes were filled in with dirt several times prior to the main sewer rupture being found.

After this sewer repair, we continued to get backup into our basement, and called MSD several times. They "snaked" the line a couple of times. They told us that it appeared to be a problem on our property—and that we should pursue this.

Second Incident:

We called Underground Detective to run a camera through the lateral line—they uncovered that lateral line ended at the telephone pole.

MSD was called again. They began running a camera from the street to our house to check the lateral line. They found both of our neighbor's taps, but could not locate our tap at 1623 Kemper Avenue. They should have a record of this.

A dye test was then conducted by MSD personnel to determine exactly where our line was tapped into the main. Large amounts of dye were used but none of it ever appeared in the main. This dye backed up into the house—damaging a section of my daughter's carpet that previously was spared from the backup. They also ran a camera through the lateral line, and could get no further than the telephone pole.

The telephone pole could be moved by pushing it—since the ground was so saturated with waste. Duke Energy removed the pole since it was of no use so that repairs could begin. When the final repairs were underway, it was found that there was never a tap for our sewage line. A brand new tap had to be placed by MSD.

Thank you for your consideration.

Sincerely,

Bruce Patanelli

City of Cincinnati



Office of City Solicitor

1/4/2008

Room 214, City Hall
801 Plum Street
Cincinnati, Ohio 45202
Phone (513) 352-3334
FAX (513) 352-1515

Cheryl & Bruce Patanelli
1623 Kemper Ave. #2
Cincinnati, Ohio 45231

J. Rita McNeil
City Solicitor

Dear Mr. and Mrs. Patanelli:

This letter is to acknowledge that the City Solicitor's Office has received your claim for damages.

We are sensitive to your situation, however, as with all claims, the City of Cincinnati must conduct a full investigation.

While we are conducting our investigation, if you have not already done so, please send the following information to the Office of the City Solicitor, Attention: Claims Administrator, 801 Plum Street, Room 214, Cincinnati, Ohio 45202:

1. Any documentation related to the amount of your damages (receipts, estimates, bills, etc.).
2. A copy of your insurance coverage related to your claim.

Please be informed that pursuant to Section 2744.05(B) of the Ohio Revised Code, if the City of Cincinnati is liable for the claimed damages, it is only liable for the amount that is not covered by insurance. If you need further explanation concerning the above, please call me at 352-1577.

The Claims Administrator will notify you by mail of the decision regarding your claim at the completion of the investigation.

Sincerely yours,


Shirley Lenzly
Claims Administrator

SL/bah
Ref #: 8183

INFORMATION FOR REQUEST FOR REVIEW

Name: BRUCE & CHERYL PATANELLI

Address: 1623 KEMPER AVENUE #1 & 2

CINCINNATI OHIO

Phone: 513-522-1623

Nature of dispute and description of your disagreement (attach additional pages if necessary):

SEE ATTACHED

Date of City's decision (please attach): JUNE 13 & JULY 17 2008

Describe the Relief that you are seeking and any evidence that you have to support your claim. Please attach your original claim and other documents (receipts, photos, videos, etc.) that you would like the Court to review:

PHOTOS ATTACHED (FOR COURT ONLY)

INVOICE ATTACHED

Check one:

☐ I would like to appear in person to explain my position to the Court.

☒ I do not need to appear in person. I would like the Court to issue a decision based on its review of this form and the attached documents.

Anna M. Ostrowski

/ IF needed, we will
APPEAR IN COURT.

Signature: Cheryl Handwick Patanelli

Date: 9/9/08

THANKS

**** File this form and any relevant documents at the Clerk of Court's office in Room 103 of the Federal Courthouse, 100 E. 5th Street, Cincinnati, OH 45202; and send a copy to the City of Cincinnati, c/o Terry Nestor, 801 Plum St., Room 214, Cincinnati, OH 45202, and/or Fax: 513-352-1515.**